C/F 100-00

(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 1365 OF 2001

BETWEEN

Laddu Ram aged about 38 years, S/o Baiha Ram, resident of Village Umla Era Gaon ,Tahsil Keskal,district Bastar

PETITIONER

A N D

1. The Collector Bastar(Competent Authority) at Jagdalpur, District Bastar (C.G.)

2. Presiding Officer, Janpad Panchayat, Polling Booth No.46, Area No.8, Korkodi,Tahsil ~~Kanker~~ Keskal,District Bastar.

3. Returning Officer, Janpad Panchayat,Keskal, District Bastar .

4. Ram Lal Salam S/o Ghadwaram, resident of Village Dhanora, Tahsil Keskal, District Bastar (C.G.).

RESPONDENTS

P. R. No. 1162/01
Presented by Shri ...
dated 8.8.01

WRIT PETITION UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF CERTIORARI ETC.

AFR

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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. NO.1365/2001

Ladu Ram

Vs

Collector, Bastar & Others

O R D E R

Post for: 8 /01/2004

Sd/-
Fakhruddin
Judge

(65)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. NO.1365/2001

Ladu Ram

Vs

Collector, Bastar & Others

Shri Vishnu Koshta, counsel for the Petitioner.

Shri Gautam Bhaduri, Dy. Advocate General for respondents No.1 to 3.

Shri Gurudev Sharan, counsel for the respondent No.4.

O R D E R

Per Fakhruddin J

By this writ petition filed under Article 227 of the Constitution of India petitioner is challenging the order dated 17.7.2001 (Annexure P/6) passed by respondent No.1/Collector whereby it was directed recounting of the votes.

(2) Briefly stated the facts are that the petitioner and respondent No.4 contested the election of Janapad Panchayat Constituency No.8 Korkoti Tahsil Keshkal (Bastar) which was held on 1.2.2000. At the time of counting respondent No.4 raised objection that certain arithmetical errors were committed by the Presiding Officer in filling up chart of booth No.8. Thereafter, the Returning Officer sent the entire papers to the Collector for deciding the matter in accordance with law. Subsequently respondent No.4 filed election petitioner before respondent No.1/Collector, Bastar. After hearing the parties, the Collector passed the order dated 21.11.2000. Pursuant to the said order, respondent No.1 declared the

result on 22.2.2001 and issued the certificate to the petitioner as an elected candidate. Respondent No.4 being aggrieved by the counting process filed an election petition under the provisions of Section 122 of the Panchayat Raj Adhiniyam before respondent No.1/Collector on the ground that at the time of counting respondent No.2-Presiding Officer committed mistake in filling up the chart of booth No.8 and inspite of the objection the Returning Officer did not correct the said mistake and prayed for recounting of booth No.8. The Tribunal issued the notice. The petitioner submitted reply thereto and denied the allegations of respondent No.4. The petitioner submitted before the Tribunal that no mistake has been committed by the Presiding Officer as such no recounting is necessary. Respondent No.2-the Presiding Officer also filed his reply and submitted that at the time of counting, no mistake has been committed by him and also stated that at the time of counting neither respondent No.4 nor his representatives raised any objection. Under these circumstances, no question arises for recounting the votes.

The learned Tribunal/respondent No.1 after hearing parties allowed the petition holding that as per facts and circumstances and material available on record that in form No.8 part-1 figures were wrongly shown in the counting slip and directed respondent No.3 to recount the votes of polling No.46, vide order dated 17.7.2001. Being aggrieved by this order petitioner has preferred this petition.

(3) Return has been filed on behalf of respondent No.4 in which it has been stated that he made an objection to respondent No.3/Returning Officer about certain mistakes committed by respondent No.2-Presiding Officer in counting the votes and respondent No.3 sent the matter for consideration to respondent No.1 (Collector). It is also

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submitted that at the same time, he also filed an election petition, which was ultimately rejected by order dated 21.11.2000 passed by respondent no.1 (Annexure P/1) on the ground that no result was declared officially, therefore, the petition is not maintainable and respondent No.3 declared the result in favour of the petitioner and as such the petitioner was declared elected. It is further submitted that after declaration of the results respondent No.4 again filed election petition before the competent authority-respondent No.1 (Annexure P-3) in which after giving reasonable opportunity of hearing to both parties and having gone through the entire record, respondent No.1 passed an order dated 17.7.2001(Annexure P-6) directing recounting. Respondent No.1 found that no application was filed by respondent No.4 though an opportunity of raising objection by filing application was available to him and further no application for recounting the votes has been filed on that date i.e.1.2.2000 when the counting of votes has been completed. The learned Collector herein respondent no.1 while drawing above findings, prima facie found some arithmetical errors from the facts floating on the surface of the record and passed the impugned order directing recounting of votes.

(4) Shri Vishnu Koshta, counsel for the petitioner contended that once the result is declared no application for re-count can be entertained and submitted that an application in writing to the Returning Officer is essential condition precedent for re-counting of votes and if it is not done then the Tribunal or the Court is not empowered to direct recounting. He further submitted that the order directing re-count, without there being an application, is not proper. In support of his contention he placed reliance on a decision of the Apex Court

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in the case of **Ram Rati vs. Saroj Devi**, reported in (1997) 6 SCC 66 (AIR 1997 SC 3072) and concluded the arguments.

(5) The decision in **Ram Rati vs. Saroj Devi** (supra) relied upon by counsel for the petitioner has been finally overruled by the Hon'ble Supreme Court in case of **Sohanlal –Vs- Babu Gandhi and others,** (AIR (2003) 1 SCC 108). The Apex Court while discussing the case of Ram Rati (supra) held that there is no prohibition in the Act or under the Rules prohibiting the Court or Tribunal to direct recounting of votes. Paragraphs 8, 9, 10 and 11, 12, 13, & 14 of the said judgment are relevant and quoted herein below:

> 8. In order to consider the correctness of the ratio laid down in *Ram Rati Case* it is necessary to see the provisions of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (hereinafter called "the said Act"). Section 43 of the Said Act empowers the State Government in consultation with the State Election Commission to make rules for preparation of electoral rolls and conduct of all elections. Section 95 further empowers the State Government to make rules for carrying out the purposes of the said Act. Section 122 provides that an election can be called in question only by a petition presented in case of Gram Panchayat, to the Sub-Divisional Officer.
>
> 9. Rule 80 reads as follows:
> *"80. Recount of votes.- (1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of Rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.*
> *(2) On such an application being made, the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.*

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(3) Every decision of the Returning Officer or such other officer authorised by him, under sub-rule (2) shall be in writing and contain the reasons therefor.

(4) If the Returning Officer or such other officer authorised by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall-

(a) count the ballot papers again in accordance with his decision;

(b) amend the result sheet to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) or Rule 77 of sub-rule (4) the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter.

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

(6) The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of Rule 77.

(7) Result sheets in Forms 16, 17, 18 and 19 for Panch, Sarpanch, member of Janpad Panchayat and member of Zila Panchayat respectively, prepared by such other officers as are authorised by the Returning Officer, shall be submitted by them, in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.

(8) The Returning Officer on receipt of result sheets under sub-rule (7) shall enter or cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, member Janpad Panchayat or member of Zila Panchayat at each polling station of the constituency concerned in subsequent part or parts of Forms 17, 18 and 19 respectively and complete and sign the result sheet."

10. Thus under sub-rule (5) once the result sheet is completed and signed, no application for re-count can be entertained.

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11. Rule 81 also provides that after the counting of the votes, the Returning Officer shall prepare a return and declare the candidate who has the largest number of votes to have been elected. Under Rule 83, a certificate is to be granted to the returned candidate who has been declared elected. Under Rule 84, after the certificate has been granted, the election officer or the Returning Officer can only correct clerical or arithmetical mistakes.

12. Thus after declaration of results, the Returning Officer has no power either to direct re-count or to change the results of the election. Once the result is declared, the only remedy of an aggrieved party is an election petition under Section 122.

13. xxx xxx xxx

14. In view of Section 122 and the Rules, we are unable to agree with the ratio laid down in Ram Rati case. It is not correct to hold that, in an election petition, after the declaration of the result, the court or tribunal cannot direct re-counting of votes unless the party has first applied in writing for re-counting of votes. There is no prohibition in the Act or under the Rules prohibiting the court or tribunal to direct a re-counting of the votes. Even otherwise, a party may not know that the re-counting is necessary till after the result is declared. At this stage, it would not be possible for him to apply for re-counting to the Returning Officer. His only remedy would be to file an election petition under Section 122. In such a case, the court or the tribunal is bound to consider the plea and where a case is made out, it may direct re-count depending upon the evidence led by the parties.

(Emphasis supplied)

(6) In view of the decision of the Supreme Court in case of Sohan Lal (supra) there is no prohibition in the Act or under the rules prohibiting the Court or Tribunal to direct a recounting of votes. Even otherwise a party may not know

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that recounting is necessary till after the result is declared as in the present case, the returning officer has dealt with the matter in great detail and has given a tabulation to demonstrate that the case for recount has been made out. In this connection, it is pertinent to reproduce the relevant portion of the impugned order dated 17.7.2001, which is quoted below:

"म0प्र0 पंचायत निर्वाचन संदर्शिका (रिटर्निंग आफिसर की हस्त पुस्तिका) के अध्याय–12 की कंडिका–11 में स्पष्ट उल्लेख है कि गणना परिणाम पत्र को पूरा भर कर जब पीठासीन अधिकारी उस पर हस्ताक्षर कर देता है, तब उसके बाद पुनर्गणना हेतु कोई आवेदन पत्र ग्रहण नहीं किया जा सकता । किन्तु इस प्रकरण में सारणीकरण के समय प्रथमदृष्टया ही प्रारूप–18, भाग–एक में गणितीय त्रुटि निम्नानुसार परिलक्षित हुई:–

अभ्यर्थी का नाम	प्राप्त विधिमान्य मत
रामलाल सलाम	86
लद्दूराम उइके	271
कुल विधिमान्य मत	297
खारिज मत	62
कुल डाले गये मतों की संख्या	359

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डाले गये मतों की संख्या 357+62–419 हो जाती है । किन्तु जनपद सदस्य हेतु मतपत्र लेखा के भाग–एक एवं भाग–दो तथा पीठासीन अधिकारी की डायरी में भी स्पष्ट उल्लेख है कि मतदान केन्द्र –46 में कुल 359 मत डाले गये हैं ,419 नहीं। अभिलेखों से स्पष्ट उल्लेख है कि श्री रामलाल सलाम को मतदान केन्द्र–46 में 86 मत मिले थे। यह तथ्य प्रारूप–18 , भाग–एक एवं उन्हें प्रदत्त गणना पर्ची में दर्शित है। श्री उइके को प्रदत्त गणना पर्ची में, तथा प्रारूप–18, भाग–एक में उन्हें प्रदत्त मतों की संख्या 271 दर्शित है।

अभिलेखों से यह निष्कर्ष नहीं निकाला जा सकता कि :–

।.– अतिरिक्त 60 मत श्री उइके के हक में त्रुटिवश दर्ज किए(211 के स्थान पर 271 लिखकर)

या

।।.– प्रतिक्षेपित मतों की संख्या 02 के स्थान पर त्रुटिवश 62 दर्शित की

गई । 60 मत जो मतपेटी में है ही नहीं , उनके कारण निर्वाचन परिणाम निश्चित तौर पर दूषित हुआ है। गणितीय त्रुटि का निराकरण पुनर्मतगणना के बगैर संभव नहीं है। जनादेश के सही आंकलन के लिए मतदान केन्द्र कमांक–46 के जनपद सदस्य हेतु डाले गये समस्त 359 मतों की पुनर्गणना हेतु आदेश दिए जाते हैं।"

(7) From perusal of the impugned order, it is clear that an error was committed by respondent No.2. In form No.18 part-1 total votes cast is written as 271. Respondent No.4 submitted that by showing the figure 271 instead of 211, additional 60 votes in favour of the petitioner was entered/written by mistake or by error. It is further submitted that total number of rejected votes shown as 62 instead of 2. This is clear from the order passed by the Tribunal. Under these circumstances recounting has been properly ordered.

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(8) Counsel for the parties during the course of argument agreed that the recounting may be done by the Tribunal. In this connection a decision of this Court reported in case of ***Asim Saha vs. Collector, Kanker & Others*** *2001 C.G.L.J. 44* has been referred. Para 9 of the said judgment is relevant and quoted below:

> "9. So far as the operative portion of the order passed by the lower Tribunal is concerned, the same deserves to be modified. It is not expected of a Tribunal that it would delegate its functions. When a plea is accepted by the election Tribunal regarding rejection or acceptance of certain votes, then it is the paramount duty rather pious duty of the Tribunal to itself count and recount the votes. The lower Tribunal unfortunately lost sight of the fact that it was asking the same authority to recount which earlier committed the illegalities. The power to recount cannot be delegated to third parties as it is the duty of the Tribunal, which it must discharge in accordance with the law."

(9) In view of the above, recounting will be done by the Tribunal and proper Videography arrangements, if required, may be made.

(10) Accordingly, this petition stands disposed of. Counsel fee as per the scale, if certified.

Sd/-
Fakhruddin
Judge

9/01/2004